REMARKS/ARGUMENTS

1. Amendment to the Specification

Applicant submits that in the description of the invention, the value of the inherent strength of the magnets he had used had been mistakenly identified. The neodymium magnets that he worked with had a so-called "Grade" of 30 through 40. Applicant mistakenly understood that these magnets were graded based on their strength in kilogauss units. Applicant has since learned that the strength values of the magnets are actually in (BH)max units of MGO (megaGauss Oersteds). Applicants also understand that these magnets that have a strength of 30-42 MGOe, also have a magnetic induction in the range of 11-13 kilogauss. Applicant submits herewith references obtained over the internet from magnet suppliers that show: that neodymium magnets are supplied in grades 30, 35 and 40; that the strength of these magnets range between 30 and 40 MGO, and that these magnets have a magnetic induction of about 11 to 13 kilogauss.

These references are:

1) Webpage http://www.rare-earth-magnets.com/magnets.htm, 3 pages; page 2 lists available neodymium magnets grades of 30, 35 and 40.

2) Webpage http://www.armsmag.com/neodymium.htm", 2 pages; page 2 shows various magnetic properties, including inductance [(BR), in gauss] and strength [(BH)max, in MGO].

Applicant believes that no new matter has been added.

2. Amendments to the Claims

Applicant has amended Claim 1 to correct the units of the strength of the magnets to MGO (megaGauss Oersteds), and to require that the magnet means is capable of retaining the mounted liquid-containing device to a metal support or surface. Support is found in attached references, and in the specification at paragraph 0015.

Claim 5 was amended to correct a dependency.

Applicant believes that no new matter has been added.

3. Rejection under 35 USC 112

Claim 5 was rejected based on 35 USC 112. Applicant has amended Claim 5 to delete the objected-to term, and to identify the "said portion" as that where the magnetic means is positioned.

4. Rejection under 35 USC 103

Claims 1, 4-9, and 15-17 are rejected under 35 USC 103(a) as being obvious over Nakayama (US Patent 3,921,620). Applicant respectfully requests reconsideration of the rejection, based on the argument below, and in view of the amendments.

Nakayama shows a band having fastening means, magnet (6) secured to one side of the band in a crevice and being covered by a cloth means (7). The examiner states: that the type of magnet used, dimension and used of indicia are all considered to be obvious matters of engineering choice with no patentable significance; and that the device shown by Nakayama is fully capable of holding a container by wrapping around the outer surface of the container. The examiner acknowledges that Nakayama does not teach a magnet having strength of about or greater than 30 kilogauss (actually, 30 MGO, equivalent to about 12 kilogauss), and that the choice of a magnet is considered to be a matter of engineering choice according to the specific magnetic force desired.

Applicants respectfully traverse the rejection. First, Nakayama is very clear in his disclosure that magnets of low power are necessary "to achieve a desired intensity of magnetic flux" (see claim 1). Nakayama states that his disclosure included "the best modes contemplated for carrying out" his invention were shown and described (col 9 lines 1-3). Specifically, his experiments show that the practice of the best mode involved a magnet that could generate a maximum magnetic induction (strength) of 620 gauss (0.6 kilogauss) (See Table 1, top row of data for a magnet on a wood plate, at 0 distance from the probe). In the preferred embodiment where a ferromagnetic plate is place on the opposite side of the magnet, to improve the efficiency, the same magnet generated 850 gauss (about 0.9 kilogauss) (about 30% more). Nakayama states that use of the ferromagnetic plate allows use of magnets "of low magnetic force" (see col. 8 lines 35-36). Applicant contends that a person of ordinary skill, upon reading

the disclosure of Nakayama, and without the benefit of reading Applicant's disclosure, would not choose to select a magnet that has a strength more than 10 times that of the "best mode" magnet used by Nakayama.

Furthermore, Applicant traverses the examiners contention that the device shown by Nakayama is fully capable of holding a container by wrapping around the outer surface of the container. Nakayama may be able to "wrap around a beverage can", but there is no suggestion of this in Nakayama. As amended, the broad claim requires that the holder retain the mounted liquid-containing device to a metal support or surface. Likewise, there is no disclosure or suggestion of this use or function. Applicant asserts that the magnets used in the band described by Nakayama are not capable of providing, and would not reasonably be modified to provide, the function and benefit of Applicant's holder. Applicant believes that the examiner is inappropriately and incorrectly applying hindsight into the capabilities of the band disclosed in Nakayama, having seen Applicant's invention.

Finally, Applicants request that the amendments be entered by the examiner in the event that an appeal is made, and to place the claims into a better condition for allowance.

Respectfully submitted,

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